

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Request of)
)
Telecom North America, Inc., and)
Telecom North America Mobile, Inc.)
)
For a Declaratory Ruling Under Section)
310(b)(4) of the Communications Act)

To: Chief, International Bureau

PETITION FOR DECLARATORY RULING

Telecom North America, Inc. (“TNA”) and Telecom North America Mobile, Inc. (“TNA-Mobile”), pursuant to Section 5(d) of the Administrative Procedure Act, 5 U.S.C. § 554, and Section 1.2 of the FCC Rules and Regulations, hereby request a declaratory ruling under Section 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. §310(b)(4). In support whereof, the parties show the following.

A. Ruling Being Requested

TNA is the holder of an international Section 214 authorization, File No. ITC-214-2003103100499, and through its wholly-owned subsidiary, TNA-Mobile, the controlling party behind a number of common carrier authorizations issued by the Wireless Telecommunications Bureau.¹ In File Nos. ISP-PDR-20131213-00012 and ISP-PDR-2014050200002 (collectively, “*Knowroaming*”), the Commission approved the acquisition by Knowroaming, Ltd. (“Knowroaming”), a Canadian corporation, of a

¹ Those common carrier authorizations are: 1) call sign WQLF750, ten MHz of PCS B-block spectrum in Cedar County, MO; and 2) spectrum manager lease authorizations, Lease ID Nos. L000010067 (PCS F-block, Coconino County, AZ), L000010068 (PCS F-block, Yavapai County, AZ) and L000013913 (one MHz of cellular B-block, rural areas throughout Nevada). {00024031.DOCX.1}

controlling 50% direct interest in TNA and indirect interest in TNA-Mobile, and also approved overall foreign ownership in TNA of 100%.² In the instant Petition, TNA and Knowroaming request a declaratory ruling that Knowroaming may, consistent with the public interest, increase its controlling stake in TNA (and thereby indirectly in TNA-Mobile as well) to 100%.

Mistakenly believing that the *Knowroaming* decision authorized additional investment by an already-passed-upon entity, Knowroaming acquired the 25% interest formerly held by Mr. Andrieu on April 28, 2015. The parties immediately reported that event to the Commission. In this Petition, the parties seek approval not only for that acquisition, but also for any potential future ownership acquisition by Knowroaming, anywhere up to and including 100% ownership of TNA.

In addition, the parties seek at this time pre-approval of a possible future reorganization, whereby Mr. Gottschalk would acquire an equity interest in Knowroaming itself, in exchange for his current ownership interest in TNA (*i.e.*, whereby TNA and TNA-Mobile would become wholly-owned subsidiaries of Knowroaming, and Mr. Gottschalk, currently a direct 25% owner of TNA, would instead hold a direct

² See Public Notice, DA-14-1725, released November 28, 2014, at pages 3-5. The other 50% foreign ownership therein approved was held by Mr. Jean Gottschalk, a German citizen, and Mr. Hervé Andrieu, a French citizen, 25% each. See also File No. ITC-T/C-2014050700148, the accompanying application for transfer of control respecting TNA's Section 214 authorization, decided with File No. ISP-PDR-2014050200002.

interest in Knowroaming, and thereby an indirect interest in TNA and TNA-Mobile, diluting the ownership interests of one or more current owners of Knowroaming.

In *Knowroaming, supra*, TNA agreed to a number of conditions requested by the U.S. Department of Justice and other federal agencies (DOJ and such other agencies, collectively, “Team Telecom”), as set forth in a letter agreement between TNA and Team Telecom dated as of November 13, 2014 (“Letter Agreement”). They hereby agree to accept all of those conditions as a condition for receipt of the approval requested herein. (For convenience, a copy of the redacted version of the Letter Agreement is attached hereto as Exhibit 1.)

B. The Legal Standard for Indirect Foreign Ownership

Section 310(b)(4) of the Communications Act provides:

No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by— ...

(4) any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

Thus, up to 25% indirect foreign ownership is permitted unconditionally, and greater levels are prohibited only in cases where the public interest so requires.³ “Congress chose not to adopt an absolute prohibition [of indirect foreign ownership]. Instead, it barred the entities

³ The burden is on the Commission to establish that greater than 25% indirect foreign ownership of a subject licenses is contrary to the public interest. *See Report from the Committee on Commerce on H.R. 1555*, H. Rep. 104-204, at 120-121 (1995).

described in sections 310(a), (b)(1) and (b)(2) from owning more than 25 percent of such a holding company only if the FCC found such restrictions to be in the public interest in the particular case.”⁴

The Commission has generally concluded that foreign investment in the U.S. telecommunications markets has public interest benefits, including encouraging greater openness and flexibility by foreign governments, fostering better trade relations, promoting competition, and economic stimulation.⁵ Indeed, after realizing that even its “relaxed” procedures implemented in 1995 in the *Foreign Entry Order* continued to impose undue regulatory burdens and costs, the Commission, in the *Foreign Ownership Review*, recently further streamlined and relaxed its procedures, including, among other things, to streamline the process where parties request specific approval for any named foreign investor that has already been approved to acquire a controlling interest of less than 100 percent (as is the case with Knowroaming) “to increase the interest to 100 percent at some future time”. *Id.*, 28 FCC Rcd at 5746.

Under the standard established in *Foreign Ownership Review*, *supra*, the Commission continues to review whether there would be adverse effects on competition,

⁴ *VoiceStream Wireless Corp., Powertel, Inc., and Deutsche Telekom AG*, 16 FCC Rcd 9779, 9803 (2001).

⁵ The most recent such policy pronouncement is in *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, 28 FCC Rcd 5741, 5744 (2013) (“*Foreign Ownership Review*”), where the Commission explained: “foreign investment has been and will continue to be an important source of financing for U.S. telecommunications companies, fostering technical innovation, economic growth, and job creation.” [Footnotes omitted.]

That pronouncement simply reinforced and continued prior announcements to the same effect. *See, e.g., Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, Report and Order on Further Reconsideration (“*Foreign Participation Order*”), 12 FCC Rcd 23896 (1997); and *Market Entry and Regulation of Foreign-affiliated Entities*, IB Docket No. 95-22, Report and Order (“*Foreign Entry Order*”), 11 FCC Rcd 3873 (1995).

and, in consultation with Team Telecom, whether there are any other public policy considerations, such as trade policy, foreign affairs or national security, which would be compromised. Under this standard, the approvals requested here are consistent with the public interest.

Even if Knowroaming were to increase its already-controlling interest in TNA and TNA-Mobile to 100%, it would not change Knowroaming's pre-existing ability to influence the activities of TNA and TNA-Mobile, or to veto any proposed activities with which it disagreed. Either way, it is the same individuals and entities behind Knowroaming, whose qualifications were passed upon by both the Commission and Team Telecom just last year.⁶ TNA and TNA-Mobile, consistent with the Letter Agreement, have been updating Team Telecom as and when required thereunder (including the buy-out of Mr. Andrieu). In short, there is no reason to depart from the public interest finding made in *Knowroaming, supra*.⁷

C. Information Required under Section 1.991

Section 1.991 of the Commission's Rules sets forth the information required to be included within each petition for declaratory ruling under Section 310(b) of the

⁶ As noted, one of those individuals upon whom the Commission and Team Telecom have already passed, Mr. Mathew Stein, has recently obtained Canadian citizenship and relinquished his South African citizenship. Mr. Stein's country of residence remains as before, in Canada. This minor change in Mr. Stein's status should, if anything, render him even more acceptable, as Canada is the United States' closest ally.

⁷ TNA-Mobile does not and will not have "market power" in the mobile telecommunications marketplace. TNA-Mobile's geographic markets and spectrum holdings are set forth in n.1, *supra*. They are all rural and remote areas, and the amount of spectrum authorized in any given geographic varies from one MHz to ten MHz, far below the level needed to command market power.

Communications Act of 1934 as amended (“Act”). That information is provided herewith in this Section C of the Petition.

Response to Section 1.991(a)

Joint Petitioners are Telecom North America Mobile, Inc., a Nevada corporation, FRN 0019026731 (“TNA-Mobile”), and its 100% parent company, Telecom North America, Inc., a Nevada corporation, FRN 0007331515 (“TNA”). They share the same address, etc., which is:

c/o Telecom North America, Inc.
Attn. Jean Gottschalk
2564 W. Horizon Parkway
Suite B5-143
Henderson, NV 89052
Tel. 702-777-2510
E-mail. gottschalk@telna.com

Johannes (Jean) Gottschalk, who is president of both corporations, is the officer certifying to the information contained in this Petition.

Response to Section 1.991(b)

Petitioners are represented herein by counsel, whose contact information is:

David J. Kaufman
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1200 New Hampshire Ave. NW
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Washington, DC 20036
Tel. 202-955-5516
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Response to Section 1.991(c)

TNA holds a Section 214 authorization and is not itself a common carrier licensee under Title III of the Act. TNA-Mobile holds the following Title III common carrier authorizations: 1) call sign WQLF750, ten MHz of PCS B-block spectrum in Cedar {00024031.DOCX.1}Section 310(b) Petition, Page 6 of 12

County, MO; and 2) spectrum manager lease authorizations, Lease ID Nos. L000010067 (ten MHz of PCS F-block, Coconino County, AZ), L000010068 (ten MHz of PCS F-block, Yavapai County, AZ) and L000013913 (one MHz of cellular B-block, rural areas throughout Nevada; no coverage of Las Vegas or Reno).

The parties request that the declaratory ruling cover each of these common carrier authorizations, including without limitation any renewals or extensions thereof. The parties further request that the declaratory ruling cover future radio common carrier authorizations that TNA-Mobile might acquire in the future, including in other spectrum bands and/or other geographic areas; *provided however*, that any such approval respecting other geographic areas or spectrum would not entitle TNA-Mobile or TNA to the benefit of overnight or streamlined processing with respect thereto, and *provided further*, that TNA-Mobile and TNA would have to deliver a true and correct copy of any future FCC application for additional spectrum authority to Team Telecom within two business days of filing with the FCC.

Response to Section 1.991(d)

Petitioners seek a ruling under Section 1.990(a)(1), *i.e.*, respecting Section 310(b)(4) of the Act pertaining to indirect foreign ownership. TNA-Mobile, the radio common carrier licensee, is and will continue to be directly owned 100% by TNA, a Nevada corporation. The 100% foreign ownership in TNA-Mobile is and will continue to be an indirect interest, held via direct foreign ownership interests in TNA.⁸

⁸ If and to the extent required by law, TNA-Mobile further requests that the declaratory ruling provide that Messrs. Gregory Gundelfinger and Mathew Stein, principals of Knowroaming, may also serve as officers and/or directors of TNA-Mobile. If such request is {00024031.DOCX.1}Section 310(b) Petition, Page 7 of 12

Response to Section 1.991(e)

Not applicable. There is not and will not be any foreign direct ownership in TNA-Mobile.

Response to Section 1.991(f)

(i) Knowroaming 100% ownership of TNA

TNA is 100% foreign-owned, and will remain 100% foreign-owned if this Petition is granted, but with slightly different foreign ownership, in that the parties herein seek approval for Knowroaming, whose 50% ownership interest in TNA was approved in *Knowroaming, supra*, to increase its ownership in TNA (and thereby indirectly in TNA-Mobile) to 100%.⁹ Knowroaming's ownership is unchanged since the Commission issued its *Knowroaming* decision. For convenience, that ownership is recited again here.

Knowroaming is owned as follows: 25% by Mr. Gregory Gundelfinger ("Gundelfinger"), a citizen of both South Africa and Germany and a permanent resident of Canada; 25% by Mr. Mathew Stein ("Stein"), a citizen of Canada;¹⁰ and 50% by Carlyle Kft ("Carlyle"), a Hungarian corporation. Messrs. Gundelfinger and Stein are the founders of Knowroaming. A flow-chart of Knowroaming's ownership is attached.

required and is deemed to be a request under Section 310(b)(3) of the Act, then TNA-Mobile hereby requests a ruling under Section 1.990(a)(2) of the Rules as well as Section 1.990(a)(1).

⁹ Initially, Knowroaming ownership is increased to 75%, reflecting its acquisition of the interest formerly held by Hervé Andrieu, a citizen of France. However, the parties herein also seek authority for Knowroaming, at some future time, to acquire the remaining 25% ownership interest in TNA held by Mr. Gottschalk, without having to return to the Commission for prior approval to do so.

¹⁰ As previously mentioned, at the time of the *Knowroaming* decision, Mr. Stein was a citizen of South Africa and a permanent resident of Canada, but he has since obtained Canadian citizenship and relinquished his South African citizenship.

Carlyle is owned by Ki Unlimited (“Unlimited”), a corporation organized under the laws of the British Virgin Islands (“BVI”). Unlimited, in turn, is owned 100% by Ki Corporation Limited (“Ki”), a corporation organized under the laws of the Isle of Jersey, a part of the United Kingdom. Ki, in turn, is controlled as follows:

There are two classes of stock in Ki – the class A shares and the class B shares. The A shares have economic rights but no voting rights. The B shares hold only voting rights (and nominal economic rights).

The A shares are registered in the name of Eurona Foundation (“Eurona-1”), a Liechtenstein foundation, as nominee for four BVI companies: Lyndhurst Holdings & Investment Limited; Parktown Investment Holdings Limited; Wendywood Investment Holdings Limited; and Kirsh Foundation Holdings Limited (collectively, the “BVI Companies”).¹¹ Each of the BVI Companies beneficially owns 25% of the A shares in Ki.

Eurona-1 has two members of its governing board – Nathan Kirsh (“Nathan”) and Prince Michael of Liechtenstein (“Michael”). Michael acts in his capacity as a private individual.

Each of the BVI Companies is owned by a BVI trust. Those four BVI trusts are: Philip Trust, Linda Trust, Wendy Trust, and Nathan Kirsh Foundation (collectively, the “BVI Trusts”). Nathan funded all four of the BVI Trusts. The beneficiaries of the BVI

¹¹ In prior filings, the parties associated the Linda Trust with Parktown Investment Holdings, Limited (“Parktown”), and the Philip Trust with Lyndhurst Holdings & Investment Limited (“Lyndhurst”). That was a clerical error, as the Linda Trust is associated with Lyndhurst, and the Philip Trust is associated with Parktown, not *vice versa*. Attached as Exhibit 2 is a flow chart illustrating the direct and indirect ownership of Knowroaming.

Trusts are: Frances Kirsh, Nathan's wife ("Frances"); Philip Kirsh, Nathan's son ("Philip"); Linda Mirels, one of Nathan's daughters ("Linda"); Wendy Fisher, the other of Nathan's daughters ("Wendy"); their remoter issue; and various charities. Nathan is not a beneficiary of any of the BVI Trusts.

The Guardian Trust Company, a BVI corporation, is the trustee of each of the BVI Trusts. Although the trustee has wide powers to administer each of the BVI Trusts, that power is somewhat circumscribed in that, under applicable law, each of the BVI Trusts has a "protector", separate from the trustee. In the case of the four BVI Trusts, that protector is the Eurona II Foundation ("Eurona-2"), a Liechtenstein foundation. As protector, Eurona-2 has substantial veto power over trustee decisions regarding distributions or other payments to beneficiaries.

The B shares in Ki are held by Eurona-2. Through these shares, Eurona-2 controls Ki.

The make-up of Eurona-2 is as follows:

There are six members of the governing board of Eurona-2; three "Class A" board members, and three "Class B" board members. (Note – these Class A and Class B *board seats* of Eurona-2 are separate and distinct from the Class A and Class B *shares* of Ki.)

The three Eurona-2 Class A board members are Philip, Linda and Wendy. The three Eurona-2 Class B board members are Interstock Anstalt, Ron Sandler and Bradley Fried.

Philip and Linda are U.S. citizens, while Wendy is a citizen of the United Kingdom. Interstock Anstalt is a Liechtenstein anstalt, Ron Sandler is a citizen of Germany, and Bradley Fried is a citizen of the United Kingdom. Interstock Anstalt is controlled by Michael. Michael acts in his capacity as a private individual.

The powers that Eurona-2 holds in its capacity as protector of the BVI Trusts (*see* discussion above) is exercised exclusively by its Class B board members, acting by majority vote among the three of them. Except as to its position as protector of the BVI Trusts, Eurona-2 acts by majority vote of its entire six-person board; this includes voting the class B shares it owns in Ki.

Each board member of Eurona-2 holds the power to appoint his/her/its successor as board member, and to later change his/her/its mind and remove any successor so appointed, except that neither Nathan nor any spouse or descendant of Nathan (collectively, a “Nathan Relative”), nor any employee of or entity controlled by any Nathan Relative, is eligible to be a Class B board member.

(ii) Potential Gottschalk Ownership in Knowroaming

Finally, the parties herein seek approval at this time for any potential future reorganization in case Knowroaming decides to acquire the 25% in TNA held by Mr. Gottschalk, and in case the parties desire to accomplish that acquisition by providing Mr. Gottschalk with an equity interest in Knowroaming. (Such an arrangement would be especially helpful if Knowroaming desired to retain Mr. Gottschalk as president of TNA.) Since Knowroaming is now held 50% by Carlyle, which thereby holds negative control of Knowroaming, depending upon the structure of any future reorganization, it is possible that exchanging Mr. Gottschalk’s interest in TNA for an interest in its parent, Knowroaming, could potentially dilute Carlyle’s interest in Knowroaming below 50%.¹²

¹² Obviously, any such hypothetical future reorganization might not be dilutive of Carlyle’s interest in Knowroaming; there are a plethora of ways to engage in reorganization. But it should be irrelevant to the Commission whether or not such a future reorganization is dilutive

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However, since such a future corporate reorganization to streamline ownership would not involve any new entities or individuals, it would not present any new public interest questions for either the Commission or its sister federal agencies. It therefore makes good policy sense to pre-approve any such future transaction at this time, subject, as always, to immediate notice to the Commission and to Team Telecom after consummation.

to Carlyle, so long as the only “new” owner of Knowroaming is Mr. Gottschalk, a known individual who has already been vetted.